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IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1947.~~ 1948.

No. ~~.....~~ 22

VERMILYA-BROWN COMPANY, INC., NECARO COMPANY, INC. and THE ARTHUR A. JOHNSON CORP., doing business as BERMUDA BASE CONTRACTORS, *Petitioners.*

v.

JOHN JOSEPH CONNELL, EUGENE T. FITZPATRICK, WILLIAM L. FLANAGAN, JOSEPH JOHN GILROY, JOHN JOSEPH MORTIMER, JAMES F. McDONALD, PAUL F. NEITER, WILLIAM H. PARKER, JR., LOUIS AUGUST REHBERG, HOWARD L. SHOCK, JR. and DAVID JOSEPH TOWNSEND.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

EIDLITZ, FRENCH, FINK & MARKLE,
J. RANDALL CREEL,
CHARLES FAHY,
Attorneys for Petitioners.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioners, Vermilya-Brown Company, Inc., Necaro Company, Inc. and The Arthur A. Johnson Corp., doing business as Bermuda Base Contractors, respectfully pray that a writ of certiorari issue to review the judgment entered in the above entitled cause by the United States Circuit Court of Appeals for the Second Circuit, reversing the judgment entered by the United

States District Court for the Southern District of New York.

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (R. 78-81) is reported at 73 F. Supp. 860. The opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 88-96) is unreported.

JURISDICTION

The judgment of the United States Circuit Court of Appeals for the Second Circuit was entered on November 28, 1947 (R. 96). The jurisdiction of this Court is invoked under the provisions of Section 240(a) of the Judicial Code, as amended.

QUESTION PRESENTED

Whether the naval and air base located in the Crown Colony of Bermuda and held by the United States under lease from the British Government for the purposes specified therein and in the Notes exchanged between the two governments on September 2, 1940, with the rights, powers and authority and on the terms and conditions contained in the Agreement between the two governments signed March 27, 1941, is a "Territory or possession of the United States", with the consequence that the Fair Labor Standards Act of 1938 applies thereto.

STATUTE AND DOCUMENTS INVOLVED

The Fair Labor Standards Act of 1938 (Act of June 25, 1938, 52 Stat. 1060, 29 U.S.C. Sec. 201 *et. seq.*) applies, with certain exceptions, to any employee who is "engaged in commerce or in the production of goods for commerce". Sec. 6, 7.

Section 3(b) defines "commerce" to mean—

> ". . . trade, commerce, transportation, transmission or communication among the several States or from any State to any place outside thereof".

Section 3(c) defines "State" to mean—

> "any State of the United States or the District of Columbia or any Territory or possession of the United States".

The Exchange of Notes, Lease and Agreement between the United States and His Majesty's Government in the United Kingdom are set forth in the printed document separately filed with this petition for the convenience of the Court, entitled "Executive Agreement Series 235, *Leased Naval and Air Bases*" (G.P.O. 1942).

STATEMENT

Petitioners were jointly engaged in the construction of an Outlying Defense Base known as Fort Bell and Kindley Field in Bermuda, a British Crown Colony. Petitioners were so engaged under a cost-plus-a-fixed-fee contract with the Corps of Engineers, United States Army (R. 14-18). The construction work and the services of the employees here involved were performed exclusively in the area, called the Leased Area, held by the United States under ninety-nine year lease from the British Government, pursuant to the Exchange of Notes between the two governments dated September 2, 1940, and an Agreement between the two governments signed at London March 27, 1941, hereinafter more fully discussed. Suit was initiated in the District Court of the United States for the Southern District of New York by eleven employees engaged by petition-

ers to perform the duties of policemen and fire-patrolmen protecting original construction work (R. 5-7). They sued under the provisions of the Fair Labor Standards Act of 1938 for overtime compensation, liquidated damages and attorneys' fees (R. 9-11). Petitioners denied the pertinent allegations of the complaint (R. 12), pleaded as a separate defense that the plaintiffs were not covered by the Act (R. 12-13), and moved for summary judgment (R. 19). Various affidavits and depositions were filed by the parties on this motion (R. 20-77). The District Court granted summary judgment for the petitioners, holding that the Act "had no application to the employment of the plaintiffs in the Leased Areas of Bermuda", because none of those areas was a Territory or possession of the United States within the meaning of the Fair Labor Standards Act. The District Court noted that it was not contended that the area is a "Territory" of the United States, and rejected the contention that it is a "possession" (R. 78 *et seq.*). On appeal the Circuit Court of Appeals for the Second Circuit reversed. It stated the question as follows: "The District Court ruled that none of the leased areas of Bermuda where the construction work of the defendants was being performed was a 'Territory or possession of the United States' within the meaning of the Act. Our question is therefore as to the correctness of this ruling and specifically whether or not the leased area is a 'possession' within the statutory meaning" (R. 89). The Court held that it was, and remanded the case to the District Court.

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in holding that the naval and air base in Bermuda leased to the United

States by the British Government under and in accordance with the terms of the Lease, the Exchange of Notes dated September 2, 1940, and the Agreement dated March 27, 1941, between the two governments, is a "possession of the United States" and, therefore, within the coverage of the Fair Labor Standards Act.

REASONS FOR GRANTING THE WRIT

I.

The decision of the Circuit Court of Appeals presents an aggregate of important questions which have not been but should be decided by this Court.

(a) The decision rests upon the interpretation of important international arrangements between the United States and the British Government for naval and air bases in Bermuda, arrangements which are indistinguishable for present purposes from those made simultaneously for like bases in Newfoundland, St. Lucia, Antigua, Jamaica, Trinidad and British Guiana. Three basic international papers are involved in each instance,—the Exchange of Notes, the Agreement, and the Lease. These must be interpreted in terms of the national and international meaning, in both a legal and political sense, of a "possession of the United States". The same question has already arisen regarding the status of military outposts in Greenland, Iran, Brazil and Canada (R. 95), which are among other areas leased for defense purposes, under varying terms and conditions, in at least 25 foreign countries.

(b) The decision below raises an independently important question in that it gives novel scope to and scope beyond the fair intendment of the Fair Labor Standards Act. Notwithstanding the great amount of

construction work already performed by the government at these naval and air bases, the Act has not been administratively applied to them; and the work done has been carried forward on an assumption that the Act did not apply. The decision affects not merely the respondents but, as we are well advised, many other employees—native and American—, numerous contractors, and a large sum of public funds, due to the cost-plus-a-fixed-fee method of contracting which has prevailed.

(c) Not only is there involved the scope of the Fair Labor Standards Act, an important matter standing alone, but the basis of the decision brings into operation in the areas affected other statutes and powers of and imposes responsibilities upon the United States which Congress has not expressly extended to nor intended to assume in those areas. In using the term "possession of the United States", Congress did not give it by definition or enumeration a meaning restricted to the purposes of this particular Act.[1] The implications of the ruling below therefore may not be limited to the confines of the particular statute, but bring to the bases all that the concept of a "possession of the United States" means under our Constitution and statutes and under the law of nations.

II.

It is submitted that the decision of the court below is erroneous. The Fair Labor Standards Act became law in 1938. The naval and air bases were not leased from

[1] Compare certain statutes affecting the Panama Canal Zone, set forth in *Luckenbach Steamship Co.* v. *United States*, 280 U. S. 173, 180-181.

the British Government until 1940-1941. The question for review is not whether Congress has the power to extend the coverage of the Act to these bases for the duration of the leases, but rather whether the Act as it now stands should be construed as applicable to them. The position of petitioners is simply that the Bermuda base is not a "Territory or possession of the United States", and that Congress has not made the Fair Labor Standards Act applicable to it by the use of those terms. Congress by amendatory legislation extended the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424) to employment on any "military, air or naval base acquired after January 1, 1940 from any foreign government", and did so in a context plainly excluding such bases from the concept of a "Territory or possession outside the continental United States".[2] In the seven years which have elapsed since

[2] The Defense Base Act, 55 Stat. 622 (1941) provided as follows: . . . "That except as herein modified, the provisions of the Act entitled 'Longshoremen's and Harbor Workers' Compensation Act', approved March 4, 1927 (44 Stat. 1424), as amended, and as the same may be amended hereafter, shall apply in respect to the injury or death of any employee engaged in any employment at any military, air or naval base acquired after January 1, 1940, by the United States from any foreign government or any lands occupied or used by the United States for military or naval purposes in any Territory or possession outside the continental United States, including Alaska, Guantanamo, and the Philippine Islands, but excluding the Canal Zone, irrespective of the place where the injury or death occurs".

This section was amended by 56 Stat. 1028, 1035 (1942), to apply to the injury or death of any employee engaged in any employment—

"(1) at any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government; or

"(2) upon any lands occupied or used by the United States for

the leases were signed, however, Congress has not extended the Fair Labor Standards Act to such base areas, after ample opportunity to consider the circumstances incident to the bases.

(a) The opinion below rests in substantial part upon the erroneous belief expressed by the court that the Leased Areas are subject to "fully as complete control by the United States" as obtains in other areas long known as "possessions of the United States" (R. 91). On the contrary, Guam, the Philippine Islands (now independent) and Puerto Rico were ceded outright to the United States by treaty with Spain, with the complete authority vested in a sovereign owner. 30 Stat. 1754, 1755; see *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 673-4; *Fourteen Diamond Rings* v. *United States*, 183 U. S. 176, 178. Likewise, by statute based on international law, guano islands which were appropriately discovered and occupied, and found not within the "lawful jurisdiction" of any other government, are

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military or naval purposes in any Territory or possession outside the continental United States (including Alaska; the Philippine Islands; the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone); or

"(3) upon any public work in any Territory or possession outside the continental United States (including Alaska; the Philippine Islands; the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone) . . .;

"(4) under a contract entered into with the United State or any executive department, independent establishment or agency thereof (including any corporate instrumentality of the United States), or any subcontract, or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States and at places not within the areas described in subparagraphs (1), (2), and (3) of this subdivision, for the purpose of engaging in any public work . . ."

considered as "appertaining to" the United States (11 Stat. 119, 48 U.S.C. Sec. 1411-1412); that is, they are not "part of", but are appurtenant to and under the sovereignty of the United States, in the same sense as our other insular dependencies. See *Jones* v. *United States*, 137 U. S. 202, 212; *Downes* v. *Bidwell*, 182 U. S. 244, 277 *et seq.*; *Balzac* v. *Porto Rico*, 258 U. S. 298, 304-5; *Hooven & Allison Co.* v. *Evatt*, *supra*, 324 U. S. at 673-5. As for Tutuila, Manua and other Eastern Samoan islands, Germany and Great Britain renounced all their "rights and claims over and in respect to" those islands, in favor of the United States as "sovereign power", 31 Stat. 1878, 1879, and the native chiefs likewise ceded "absolutely and without reserve to the United States of America all rights of sovereignty" therein. 45 Stat. 1253. The cession was accepted, ratified and confirmed by Congress (*id.*, amended by 46 Stat. 3, 48 U.S.C. Sec. 1431a), as was done in the case of the Hawaiian Islands. 30 Stat. 750; see *Hawaii* v. *Mankichi*, 190 U. S. 197, 209. By joint resolution, Congress extended the sovereignty of the United States over Swains Island and placed it under the jurisdiction of the administrative and judicial authorities of the government established in American Samoa by the President of the United States. 43 Stat. 1357, 48 U.S.C. Sec. 1431. Notwithstanding varying forms of local autonomy granted by the United States: each of the foregoing, variously called a "possession", "insular possession" or "dependency", embraces an area over which the sovereignty of the United States is complete and undisputed, in all matters civil, political and military.

(b) In contrast, the bases here in question are solely military outposts on foreign soil, leased to the United

States only for security and defense purposes. This is made amply clear by the Exchange of Notes, the Leases and the Agreement.[3] No more was sought. No more should be held to have been granted or acquired. There was no surrender of sovereignty by the British Crown or acquisition of sovereignty by the United States. No reservoir of authority flowing from sovereignty is available for the exercise of control; the terms of the arrangements alone supply the basis for all authority exercised by the United States.

When the detailed terms and conditions of the Agreement are read as they must be in the light of the de-

[3] Lord Lothian's Note of September 2, 1940, expressed his Government's interest "in the national security of the United States" and their desire "to strengthen the ability of the United States to cooperate effectively with the other nations of the Americas in the defense of the Western Hemisphere". Accordingly His Majesty's Government "will secure the grant to the Government of the United States, freely and without consideration, of the lease for immediate establishment and use of Naval and Air bases and facilities for entrance thereto and the operation and protection thereof". Executive Agreement Series 235, *Leased Naval and Air Bases*, pp. 14-15. In replying on behalf of the United States, Mr. Hull referred to the generous actions of His Majesty's Government "which are destined to enhance the national security of the United States and greatly to strengthen its ability to cooperate effectively with the other nations of the Americas in the defense of the Western Hemisphere. It therefore gladly accepts the proposals". The note of Mr. Hull added that the United States "will immediately transfer to His Majesty's Government fifty United States Navy Destroyers . . ." *Id.*, pp. 15-16. The leases recite the undertaking of the note "to secure the grant to the United States of the lease of certain Naval and Air Bases and facilities"; and the United States "agrees that it will not during the term hereby granted use the Leased Area nor permit the use thereof except for the purposes specified". The Agreement of March 27, 1941, incorporated in each lease by reference, stresses the same fundamental approach of the two Governments. *Id.*, p. 1.

cleared purpose, each provision is entirely consistent with the limited military character of the rights acquired by the United States, and numerous provisions are inconsistent with and negate a grant of any other or broader character.[4] Although the United States acquired large powers to effectuate the military objective, the combination of the general over-all limitations to that purpose with the specific limitations respecting all matters unrelated to that purpose, serve graphically to

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[4] For example, the *limited* lifting of existing immigration laws (Art. XIII); the *limited* exemption from customs and duties (Art. XIV); the *limited* character of the postal facilities which might be established by the United States (Art. XVI; and see par. 3, letter by Ambassador Winant, dated Mar. 27, 1941, Executive Agreement Series 235, *supra*, p. 41); the *prohibition* against engaging in any business or professional activity, except such business as *post exchanges* and the like (Art. XVIII), against reselling food admitted free of customs (Art. XIV(4)), and against establishing a wireless station or landing a submarine cable in a Leased Area otherwise than for military purposes (Art. XV). Jurisdiction vested in the United States is limited to offences of a military nature or related to protecting the security and property of the base (Art. IV). Minerals and antiquities are reserved to the United Kingdom or local government, and the United States agrees to permit the exercise of fishing privileges within the Leased Areas "insofar as may be found compatible with military requirements" (Art. XXV). Only those laws of the local government which "*derogate from or prejudice any of the rights conferred on the United States*" are inapplicable (Art. XXIX) (italics supplied). Provision is made for modification of the terms of the Agreement after a reasonable time (Art. XXVIII). The United States is not obliged to exercise any right, power or authority granted (Art. III), but agrees not to "assign or underlet or part with the possession of the whole or any part of any Leased Area" (Art. XXIII). The United States may abandon any Leased Area or part thereof without obligation, presumably when the military necessity therefor is deemed passed; and, on the expiration of due notice, the area abandoned "shall revert to the Lessor" (Art. XXI).

emphasize the special character of the arrangements and to exclude the status of sovereignty heretofore understood by the term "possession of the United States". In the Fair Labor Standards Act Congress was exercising its sovereign legislative power. The power of the United States over the Leased Areas does not arise from sovereignty over them but from the terms of the international arrangements. It would seem clear therefore that the power thus far exercised by Congress in the Fair Labor Standards Act may not properly be construed as covering areas not embraced within the power exercised, nor can a contrary intention be imputed to Congress.

The court below in other respects (R. 90-91) misconstrued the powers of control vested in the United States by failing to take account of both the general and specific limitations of the arrangements. Its reference to the provision that a Leased Area is "not a part of the territory of the United States for the purpose of coastwise shipping laws" (Art. XI(4)) (R. 91) gives inappropriate weight to mere evidence of the natural desire of a great maritime nation to avoid any question that the authority granted the United States might be deemed to exclude British vessels from trade between the United States and the Leased Areas. No more meaning can properly be read into the specific exemption of coastwise shipping laws. On the contrary, in a later statute extending Navy courts-martial jurisdiction, Congress denominated Leased Areas generally as being "without the territorial jurisdiction" of the United States. 57 Stat. 41, approved March 22, 1943.

(c) Even if the question were more doubtful, it is submitted that the Circuit Court of Appeals should have affirmed the judgment of the District Court, which

was in harmony with the position of the executive branch of the Government. The President himself, far from claiming the Leased Areas as possessions of the United States, described them officially as "Army and Navy bases in British possessions in the Atlantic Ocean". Executive Order 8623 (Dec. 31, 1940), 6 F.R. 13. The Attorney General's opinion published with the Exchange of Notes and upholding the President's authority to consummate the arrangement, specifically referred to the "sovereignty retained by Great Britain" in the Leased Areas. 39 Op. Atty. Gen. 484, 485. The representatives of the British Government

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[5] *The Prime Minister (Winston Churchill)*: "President Roosevelt has recently made it clear that he would like to discuss with us, and with the Dominion of Canada and with Newfoundland, the development of American naval and air facilities in Newfoundland and in the West Indies. There is, of course, no question of any transference of sovereignty—that has never been suggested—or of any action being taken, without the consent or against the wishes of the various Colonies concerned, but for our part, His Majesty's government are entirely willing to accord defence facilities to the United States on a ninety-nine year leasehold basis, and we feel sure that our interest no less than theirs, and the interests of the Colonies themselves and of Canada and Newfoundland, will be served thereby". 364 Parliamentary Debates, House of Commons (Aug. 20, 1940) pp. 1170-1171.

The Secretary of State for Foreign Affairs (Viscount Halifax): "The fact that the leases are to be for a period of ninety-nine years ensures that this Agreement, concluded as I have said for the advantage of both parties, shall not be of a merely passing or ephemeral kind. No question of any transference of sovereignty arises, and the Governors of the territories in which concessions are being made, as also His Majesty's government in Canada, have been consulted at every stage and have fully concurred in what has been done. I think it is also true to say that from all the reports reaching me, the Agreement has been received with warm approval and cordiality by the peoples directly concerned. Cer-

and the United States[6] in the negotiations expressly recognized that no sovereignty was transferred.

No executive agency of the United States has contended the contrary. The Acting Legal Adviser of the Department of State has stated that "this government has not made any claim that the bases in Bermuda are territories or possessions of the United States" (R.

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tainly it is true that this Agreement stands in singular contrast to the more tortuous processes by which the totalitarian powers seek to enlarge their sphere of domination at the expense of others." 117 Parliamentary Debates, House of Lords (Sept. 5, 1940), p. 367.

[6] Hearings on H. R. 5096 [companion to S. 1642, approved August 16, 1941, 55 Stat. 622, *supra* note 2], Committee on the Judiciary, House of Representatives, 77th Cong., 1st Sess. (July 24, 1941):

Mr. Walter [Presiding member of the Committee, and in charge of the bill]. "Before going any further on that point, you were being careful to avoid the implication that there was a transfer of sovereignty".

Mr. Fahy [Assistant Solicitor General, and civilian United States representative in the negotiations]. "Yes; to a claim of a transfer of sovereignty. The opinion of the Attorney General, on the basis of which the President was convinced that he had the right to make the arrangements, said that sovereignty was not transferred, and Mr. Churchill, when he agreed to the arrangements and reported to the House of Commons about them, stated to the House of Commons that sovereignty would not be transferred. So we never departed from the position that the heads of the two governments had taken on that technical point".

Mr. Walter: "Then if there is no transfer of sovereignty, the only powers and rights that we had over that territory were those expressly given to us under the terms of the Agreement".

Mr. Fahy: "Either expressly or by implication, but they come from the agreement. We are not sovereign".

26). The Division of Territories and Island Possessions of the Department of Interior has not been vested with administration of the Leased Areas (R. 27). The Wage-Hour Division of the Department of Labor, charged with the administration and enforcement of the Fair Labor Standards Act, has published interpretations which have been outstanding continuously from the inception of the Act to the present date, and which have never included the Leased Areas or similar bases in the enumeration of "Territories and possessions" covered by the Act.[7] This evidences the clear intent of the Administrator to exclude them. Although fully cognizant of this and other litigation raising the question, the Administrator has reiterated this interpretation as recently as July 3, 1947.[8] Such interpretation by the Administrator is entitled to great weight. See *United States* v. *American Trucking Association*, 310 U. S. 534, 549. "The Administrator's policies . . . determine the policy which will guide applications for enforcement by injunction on behalf of the Government." Good administration of the Act and good judicial administration alike require that the standards of public enforcement and those for determining private rights shall be at

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[7] "In Section 3(c) 'State' is defined as meaning 'any State of the United States, or the District of Columbia, or any Territory or possession of the United States.' Therefore, employees, within the District of Columbia, and the Territories and possessions (*Alaska, Hawaii, Puerto Rico, the Canal Zone, Guam, Guano Islands, Samoa, Virgin Islands*), are dealt with on the same basis as employees working in any of the forty-eight States". *Interpretative Bulletin No. 2*, issued Oct. 17, 1938, repeated in "*General Statement on Coverage*", effective July 11, 1947. CCH Labor Service, par. 32,102; par. 31,852.01(c).

[8] 12 F. R. 4583, 4584. Sec. 776.1(c), quoted *supra* note 7.

variance only where justified by very good reasons". *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140. Here, no reasons for variance appear, and many considerations of national and international policy call for uniformity as between private rights and public enforcement.

The exclusion of Leased Areas from coverage is in line with Section 17 of the Act, which vests civil jurisdiction to issue injunctions in the district courts of the United States, and in "the United States courts of the Territories and possessions". The Leased Areas are not properly included within the expression "Territory or possession", as used in this statute, since no civil courts of any kind have been established by Congress in the Leased Areas (R. 25), and there is no intention to do so.[9]

This conclusion is reinforced by other factors of weight in statutory construction. First, the Act does not purport to exhaust the Federal power, either over all employment subject to the commerce clause (*Kirschbaum Co.* v. *Walling*, 316 U. S. 517, 521-523; *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, 569-571), or the fullest application to all places subject to Federal juris-

[9] "The President has stated that civil courts will not be established in leased areas beyond the territorial jurisdiction of the United States". S. Rpt. 26 (by Mr. Walsh) on S. 303, Committee on Naval Affairs, U. S. Senate, 78th Cong., 1st Sess. The bill in question, S. 303, extending jurisdiction of naval courts-martial, was approved March 22, 1943. 57 Stat. 41, *supra* p. 12. In describing a similar measure in the preceding Congress, Chairman Walsh stated: "The bill seeks to give jurisdiction to naval courts over civilians employed by our naval organization in areas where no civil courts are available". 88 Cong. Rec. 9481, 77th Cong. 2d Sess.

diction.[10] Second, where Congress intended the Leased Areas to be covered, it has done so by express statutes, in the two instances of naval court-martial jurisdiction and the Longshoremen's and Harbor Workers' Compensation Act. *Supra*, pp. 7, 12. Third, no Congressional acquiescence was obtained or sought here on the basis that sovereignty was being acquired, and all official acts in the premises, executive and legislative, show that the United States contemplated and acquired only leaseholds for naval and air bases in British possessions, with the rights, powers and authority incident to their military purpose.

In all the circumstances, it is submitted that any doubt as to the construction of the statute should be resolved against its application to such military bases on foreign soil, with corresponding extension of sovereignty. It is submitted that such application should be made only by Congress, in the light of the situation existing at the time, and with the benefit of consultation with the executive departments particularly concerned with our international relations, insular affairs, national defense, and labor relations. The judiciary should be slow to decide that laws enacted without consideration of the factors here involved should be applied to such Leased Areas as "possessions of the United States". In any event, a decision to that effect

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[10] Employment within the Territories and possessions is not covered to the limit of Congress' plenary power therein, but on the same basis as employment in any of the 48 States. See Interpretative Bulletin No. 2, *supra* note 7. The Philippine Islands are excluded altogether because not expressly enumerated. 39 Stat. 547, 48 U.S.C. Sec. 1003. Special provision is made as to homework in the Virgin Islands and Puerto Rico: 54 Stat. 615, 616, 29 U.S.C. Sec. 205(e), 206.

should not remain unreviewed by this Court. Absent such review in this case the decision below, whatever the outcome on other possible issues on remand, will remain to vex the question which calls so strongly for the consideration and decision of this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the writ prayed should be granted.

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